

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 41 of 1997

in

CIVIL APPLICATION No 46 of 1997

with

CIVIL APPLICATION No 90 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

WELLCOME FOUNDATION LIMITED,

Versus

RELIANCE FORMULATIONS PVT.LTD.

Appearance:

1. O.J.APPEAL No. 41 of 1997
MR GN SHAH for Petitioner
MR RR SHAH for Respondent No. 1
2. CIVIL APPLICATION No 90 of 1997
MR GN SHAH for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 22/10/97

ORAL JUDGEMENT (Per C.K.Thakker J.)

Learned counsel for the appellant craves leave to delete respondent no.2, as according to the learned counsel for the appellant, he does not claim any relief against respondent no.2. Prayer granted. Name of respondent no.2 is ordered to be deleted. Respondent no.1 will now be sole respondent.

Admitted. Mr.R.R.Shah waives service of notice of admission on behalf of the respondent. In the facts and circumstances of the case, this matter is taken up for final hearing to day.

We have heard Mr.S.N.Shelat, for Mr.G.N.Shah for the appellant and Mr.R.R.Shah, learned counsel for the respondent.

This appeal is filed against an interlocutory order passed by the learned Single Judge in Civil Application No. 46/97. That civil application was filed in Appeal No.2/97 against the order passed by the Assistant Registrar of Trade Mark, Ahmedabad on February 12, 1997. Appeal is admitted and is pending for final hearing. A statement was made at the bar that appeal was placed on Board for final hearing on September 22, 1997. Along with the memorandum of appeal an application was filed and the learned Single Judge on 13th August 1997 passed the following order:

"Having heard the learned counsel for the parties, prayer for interim relief is refused. The Civil Application is rejected."

It is against that order that the present appeal is filed.

Mr.Shelat, learned counsel for the appellant contended that the appeal is admitted and is placed for final hearing and is on Board. The controversy raised by the appellant will be heard by the learned Single Judge. He, however, submitted that during the pendency of the appeal, since civil application is rejected and interim relief is refused, it has resulted into prejudice to the appellant. He submitted that as soon as the matter is decided by the Assistant Registrar in accordance with the

provisions of the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as "the Act") registration will be granted in favour of the respondents. The learned Single Judge has not passed any order as to whether the order passed by the Assistant Registrar would be subject to the final outcome in appeal which is filed and pending. He also submitted that no direction is given by the learned Single Judge regarding maintenance of account. In absence thereof, prejudice will be caused to the appellant, if finally the appeal will be allowed. He, therefore, submitted that the court may not enter into merits of the matter at this stage but at the same time the court may consider rival contentions of the parties so far as the question agitated in the civil application before the learned Single Judge in the present Letters Patent Appeal, and may pass equitable relief granting in favour of the appellant by passing the order that the action would be subject to the result of the appeal pending before the learned Single Judge and by directing to the respondents to maintain accounts so that at final hearing stage, the learned Single Judge would be in a position to pass appropriate order taking into account all the facts and circumstances.

Mr. Shah, on the other hand submitted that respondent is using the mark in question since about seven years. He further submitted that after taking into account all the facts and circumstances and evidence on record, the Assistant Registrar passed an order which is in consonance with law. The appeal is admitted, but in the light of the evidence before the court, the learned Single Judge did not grant interim relief and this is an interlocutory order and since it is discretionary in nature this court may not interfere at this stage. He further submitted that the appeal is already on board. He was and is willing to proceed with the matter and will cooperate in every respect. He submitted that in accordance with the provisions of the Act, once the order is passed by the Assistant Registrar, there is no discretion left in the authority from refusing the registration and the court may not pass any order by which the order passed by the competent authority may not be implemented. He, however, submitted that at the time of final hearing of the matter an appropriate order can always be passed. He, therefore, submitted that the appeal may not be entertained and that it may be dismissed.

In the facts and circumstances of the case, in our opinion, it would be in the interest of justice only to grant a limited prayer that the order passed by the

Assistant Registrar would be subject to the result of Appeal No.2 of 1997 pending before the learned Single Judge. Except that at this interim and interlocutory stage, in our opinion, no relief can be granted. Mr.Shah for the respondent has stated at the bar that as and when the matter will be called out for hearing he will cooperate in all respects. In this view of the matter, the OJ Appeal deserves to be dismissed. In the facts and circumstances of the case, no order as to costs.

Dt. 22.10.1997.

(C.K.THAKKER J.)

(MISS R.M.DOSHIT J.)